

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 Loreli Nolan,

5 Plaintiff

6 v.

7 American Family Insurance Company,

8 Defendant

2:15-cv-02051-JAD-NJK

Order Granting Motion for Summary
Judgment, Entering Judgment, and
Closing Case

[ECF No. 15]

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10 Insured Loreli Nolan sues her uninsured/underinsured motorist insurance provider, American
11 Family Insurance Company, for breach of contract, breach of the implied covenant of good faith and
12 fair dealing, and violations of Nevada's Unfair Claims Practices Act.¹ American Family moves for
13 summary judgment on all of Nolan's claims, and Nolan's counsel has filed a non-opposition
14 indicating that counsel has lost contact with Nolan. Finding American Family's motion for summary
15 judgment meritorious, I grant it, enter judgment for American Family and against Nolan, and close
16 this case.²

17 **Background**

18 In June 2012 Nolan held a family-car policy from American Family that included
19 uninsured/underinsured motorist coverage with a policy limit of \$100,000 per person and \$300,000
20 per accident.³ The policy requires an insured claiming coverage to notify American Family
21 "promptly" of any potential claim under the policy and provides that the insured "must cooperate
22 with [American Family] and assist [it] in any matter concerning a claim . . . [and] authorize [it] to
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26 ¹ ECF No. 1.

27 ² I find this motion suitable for disposition without oral argument. LR 78-1.

28 ³ ECF No. 15-1.

1 obtain medical, employment, vehicle, and other records and documents” as requested.⁴

2 On June 13, 2012, Nolan was involved in a car accident.⁵ About three weeks later, Nolan’s
3 counsel notified American Family of a potential claim under the policy.⁶ On July 17 American
4 Family responded with a letter setting forth the terms of the policy.⁷ American Family then sent
5 follow-up letters inquiring about the status of Nolan’s injuries on September 28 and November 28,
6 2012, and January 28, 2013, but received no response.⁸

7 On April 18, 2013, Nolan demanded that policy limits be paid, explaining that the at-fault
8 driver did not have sufficient insurance to cover the damages she incurred from the accident.⁹ On
9 May 3, 2013, American Family sent a letter to Nolan acknowledging receipt of the policy-limits
10 demand and requesting a complete set of medical records for five years prior to the accident and
11 requesting that Nolan complete the enclosed medical-authorizations form and fact sheet.¹⁰ American
12 Family again requested this information on June 5, June 19, and November 29, 2013;¹¹ Nolan
13 ignored the requests.

14 On January 16, 2014, Nolan provided the completed fact sheet and the medical-authorization
15 forms requested by American Family.¹² Two months later, American Family sent Nolan a letter
16 noting that it had begun to receive medical records but requested that Nolan complete a new
17 medical-authorization form for one of the medical providers who would not accept the authorization

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19 ⁴ *Id.* at 2.

20 ⁵ ECF No. 15-3.

21 ⁶ ECF No. 15-5.

22 ⁷ ECF No. 15-6.

23 ⁸ ECF No. 15-7, 15-8, 15-9.

24 ⁹ ECF No. 15-10.

25 ¹⁰ ECF No. 15-11.

26 ¹¹ ECF No. 15-12.

27 ¹² ECF No. 15-15.

1 Nolan had provided.¹³

2 On August 5, 2014, American Family sent a letter to Nolan affirming that it had received all
3 of the medical records and would complete its review.¹⁴ One week later, Nolan sent a letter to
4 American Family again demanding policy limits, explaining that she recovered only \$25,000 from
5 the person who caused the accident. The letter did not include any additional medical records or
6 information.¹⁵

7 On September 11, 2014, American Family sent a letter to Nolan requesting that she submit to
8 an independent medical examination and requesting additional medical records.¹⁶ Two months later,
9 Nolan sent a letter requesting that American Family immediately begin the process of selecting a
10 doctor for the IME while she gathered the requested medical records, and she accused American
11 Family of delaying the process.¹⁷ American Family responded two days later, stating that it could
12 have the third-party medical-management company contact Nolan to set up the appointment but that
13 Nolan must be prepared to provide the additional requested medical records to the medical-
14 management company;¹⁸ Nolan did not respond.

15 Four months later, American Family again sent a letter to Nolan inquiring about the status of
16 the additional records so that American Family could schedule the IME.¹⁹ American Family sent
17 follow-up letters on May 10 and August 27, 2015; Nolan still did not respond.²⁰ American Family
18 received no further response from Nolan until she filed this lawsuit in Nevada's Eighth Judicial
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20 ¹³ ECF No. 15-16.

21 ¹⁴ ECF No. 15-17.

22 ¹⁵ ECF No. 15-18.

23 ¹⁶ ECF No. 15-19.

24 ¹⁷ ECF No. 15-20.

25 ¹⁸ ECF No. 15-21.

26 ¹⁹ ECF No. 15-22.

27 ²⁰ ECF No. 15-23, 15-24.

1 District Court in September 2015.²¹

2 Discussion

3 A. Summary-judgment standards

4 Summary judgment is appropriate when the pleadings and admissible evidence “show there
5 is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of
6 law.”²² When considering summary judgment, the court views all facts and draws all inferences in
7 the light most favorable to the nonmoving party.²³ If reasonable minds could differ on the material
8 facts, summary judgment is inappropriate because its purpose is to avoid unnecessary trials when the
9 facts are undisputed and the case must proceed to the trier of fact.²⁴

10 If the moving party satisfies FRCP 56 by demonstrating the absence of any genuine issue of
11 material fact, the burden shifts to the party resisting summary judgment to “set forth specific facts
12 showing that there is a genuine issue for as to the material facts”; it “must produce specific evidence,
13 through affidavits or admissible discovery material, to show that” there is a sufficient evidentiary
14 basis on which a reasonable fact finder could find in its favor.²⁵ The court may only consider facts
15 that could be presented in an admissible form at trial in deciding a motion for summary judgment.²⁶
16 Summary judgment may not be granted by default.²⁷

17 American Family argues that it is entitled to summary judgment because Nolan lacks
18 evidence to show that she fulfilled all conditions precedent under the policy or that American Family
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20 ²¹ ECF No. 15-2.

21 ²² See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing FED. R. CIV. P. 56(c)).

22 ²³ *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

23 ²⁴ *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); see also *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

25 ²⁵ *Bank of Am. v. Orr*, 285 F.3d 764, 783 (9th Cir. 2002) (internal citations omitted); *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991); *Anderson*, 477 U.S. at 248–49.

26 ²⁶ FED. R. CIV. P. 56(c).

27 ²⁷ See *Henry v. Gill Industries, Inc.*, 983 F.2d 943, 949–50 (9th Cir. 1993).

1 violated any section of the UCPA or acted in bad faith when it decline to tender Nolan policy
 2 limits.²⁸ Nolan’s counsel has filed a non-opposition, explaining that counsel has been unable to
 3 locate Nolan since this case was filed in September 2015.²⁹

4 **B. American Family is entitled to summary judgment on Nolan’s claims because it has**
 5 **demonstrated an absence of genuine issues of fact and that it is entitled to judgment as a**
 6 **matter of law.**

7 ***1. Breach of contract***

8 To prevail on a breach-of-contract claim under Nevada law, the plaintiff must show (1) the
 9 existence of a valid contract, (2) a breach by the defendant, and (3) damage as a result of the
 10 breach.³⁰ As the Nevada Supreme Court has explained, the plaintiff generally has the burden of
 11 pleading and proving that it fulfilled conditions precedent in order to recover on a breach-of-contract
 12 claim.³¹

13 The record shows that Nolan did not fulfill conditions precedent under the policy. The policy
 14 requires an insured claiming coverage to “cooperate with [American Family] and assist [it] in any
 15 matter concerning a claim . . . [and] authorize [it] to obtain medical, employment, vehicle, and other
 16 records and documents” as requested.³² The undisputed evidence shows that Nolan did not cooperate
 17 with American Family; she instead repeatedly ignored its requests for medical documents and
 18 authorizations and to schedule her independent medical examination. I therefore find that American
 19 Family is entitled to summary judgment on claim one.
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23 ²⁸ ECF No. 15.

24 ²⁹ ECF No. 22.

25 ³⁰ *Richardson v. Jones*, 1 Nev. 405 (1865).

26 ³¹ *Clark Cty School Dist. v. Richardson Const., Inc.*, 168 P.3d 87, 95 n.21 (Nev. 2007) (citing NRCP
 27 9(c) and *Walton v. Nalco Chem. Co.*, 272 F.3d 13, 20–23 (1st Cir. 2001)).

28 ³² *Id.* at 2.

1 **2. *Insurance bad faith***

2 An insurer breaches its duty to act in good faith when it unreasonably refuses “to compensate
3 the insured for a loss covered by the policy.”³³ To establish a prima facie case of insurance bad faith
4 in Nevada, an insured must show that (1) the insurer had no reasonable basis for disputing coverage
5 and (2) that the insurer knew or recklessly disregarded the fact that there was no reasonable basis to
6 dispute coverage.³⁴ Given Nolan’s repeated failure to cooperate with American Family’s document
7 requests, she cannot show that the insurer unreasonably refused to tender her policy limits, and
8 American Family is entitled to summary judgment on her bad-faith claim.

9 **3. *Unfair claims practices***

10 Section 686A.310 of the Nevada Revised Statutes prohibits unfair practices in processing
11 insurance claims. Nolan does not identify which section of the UCPA she believes American Family
12 violated. Some prohibited practices include failing to acknowledge or act on claim communications
13 in a reasonably prompt manner³⁵ and failing to effectuate prompt, fair and equitable settlements of
14 claims in which liability of the insurer has become reasonably clear.³⁶

15 The record reflects that American Family acknowledged and acted on all claim
16 communications in a reasonably prompt manner and attempted to effectuate prompt, fair, and
17 equitable settlement of her claims by repeatedly requesting medical documents and authorizations
18 and trying to schedule Nolan for her IME so that American Family could determine the value of her
19 claim. The record is clear that it was Nolan—not American Family—who caused any delay in the
20 handling of her claim or claim communications. Accordingly, American Family is entitled to
21 summary judgment on Nolan’s UCPA claim.

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24 ³³ *Pemberton v. Farmers Ins. Exch.*, 858 P.2d 380, 382 (Nev. 1993) (internal citation and quotation
25 marks omitted).

26 ³⁴ *Powers v. United Serv. Auto Ass’n*, 962 P.2d 596, 604 (Nev. 1998).

27 ³⁵ NEV. REV. STAT. § 686A.310(1)(b).

28 ³⁶ NEV. REV. STAT. § 686A.310(1)(e).

Conclusion

Accordingly, with good cause appearing and no reason to delay, IT IS HEREBY ORDERED, ADJUDGED, and DECREED that American Family's motion for summary judgment [ECF No. 15] is GRANTED.

The Clerk of Court is directed to enter judgment for American Family and against Nolan and to CLOSE THIS CASE.

Dated this 12th day of December, 2016.



Jennifer A. Dorsey
United States District Judge